Supreme Court, U.S.
FILED
OCT 22 1992
OFFICE OF THE CLERK

No. 92-518

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

MARVIS DOUGHTY,

Petitioner,

v.

ZOECON CORPORATION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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October 22, 1992

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QUESTION PRESENTED

In a case based on diversity jurisdiction, must a trial court allow unlimited discovery of a corporate defendant's financial information by a plaintiff who is trying to refute the defendant's proof of the site of its principal place of business?

PARTIES

Petitioner, Marvis Doughty ("Doughty"), is an individual resident of Dallas, Texas.

Respondent, Zoecon Corporation ("Zoecon"), is a Delaware Corporation with its principal place of business in Dallas, Texas. Its parent company is Sandoz Corporation, headquartered in New York City, New York. Zoecon Corporation has no non-wholly owned subsidiaries.

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TO THE HONORABLE SUPREME COURT:

The Respondent, ZOECON CORPORATION, respectfully requests that this Court deny the Petition for Writ of Certiorari submitted by the Petitioner, MARVIS DOUGHTY.

OPINIONS BELOW

On its summary calendar, the Fifth Circuit Court of Appeals affirmed the trial court's dismissal of Doughty's

case for lack of subject matter jurisdiction. Neither courts' opinion is published. They are reproduced in the appendix to Doughty's Petition for Writ of Certiorari.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The dispute in this case arises from the diversity jurisdiction provisions of U.S. Const., art. III, §2 Cl. 1 and 28 U.S.C. §1332(a)(1). The lower courts both held that the parties are not citizens of different states.

STATEMENT OF THE CASE

Marvis Doughty, a resident of Dallas, Texas, filed suit in federal court in Dallas against Zoecon Corporation, seeking personal injury damages. Zoecon moved to dismiss because there was no diversity of citizenship. Doughty contested the dismissal. She asked the trial court to allow her to conduct discovery in an attempt to refute the testimony of Zoecon's corporate officer, who had testified by affidavit attached to the motion that Zoecon's principal place of business is in Dallas, Texas.

The trial court granted Doughty's request for discovery, extended its deadline twice, and allowed Doughty seven months to disprove Zoecon's assertion of Texas as the state of its principal place of business. Upon receipt of Zoecon's answers and objections to discovery, Doughty moved to compel the production of certain financial information, arguably to determine the geographical distribution and value of Zoecon's assets. The trial court ordered some of the requested financial information produced. Zoecon complied. The trial court protected some of Zoecon's financial information from dis-

covery. After receiving the compelled discovery information, Doughty failed to respond further to Zoecon's motion to dismiss, specifically declining to present any evidence disproving Dallas, Texas as Zoecon's principal place of business.

Doughty rests her entire petition on the fact that she was not able to discover Zoecon's balance sheets, ledgers, income statements and tax returns (Zoecon had to produce only the heading portion of tax returns, to show its address). She ignores the numerous items of information which Zoecon produced to prove its principal place of business is Texas. Instead, with no factual support, she asserts that the trial court could not determine Zoecon's principal place of business without looking at the value and geographical distribution of its assets.

SUMMARY OF THE ARGUMENT

I. This case presents no issue appropriate for the Court's exercise of its discretionary jurisdiction. It merely challenges the trial court's answer to a question of fact.

II. Doughty failed to dispute Zoecon's proof that its principal place of business is Dallas, Texas.

III. The trial court did not abuse its discretion by refusing Doughty's request to obtain additional financial information from Zoecon.

ARGUMENTS & AUTHORITIES

I.
REASONS FOR DENIAL OF WRIT OF CERTIORARI

This case presents no novel question of law. It is a dispute about whether an individual can obtain unlimited discovery of a corporation's financial information in a continuing attempt to maintain diversity jurisdiction in federal court, once it has been shown lacking. The decision of the Fifth Circuit Court of Appeals does not conflict with the decision of another court of appeals on the same matter. The decision does not depart from the accepted and usual course of judicial proceedings, nor does it sanction such a departure by the lower court, to call for an exercise of this Court's power of supervision. The court of appeals' decision involved no important question of federal law which has not been, but should be, settled by this Court, nor did it decide a federal question in a way that conflicts with applicable decisions of this Court.

This case is nothing more than Doughty's disagreement with the trial judge's decision on where discovery should stop. The question of a corporation's principal place of business is a question of fact, for purposes of determining jurisdiction. *Vareka Investments, N.V. v. American Inv. Properties, Inc.*, 724 F.2d 907 (11th Cir. 1984), *cert. denied*, 469 U.S. 827 (1984). The trial court has wide discretion in determining these matters. *Pan Islamic Trade Corp. v. Exxon Corp.*, 632 F.2d 539 (5th Cir. 1980), *cert. denied*, 454 U.S. 927 (1981). The trial court properly balanced Zoecon's interest in protecting its private financial information, which had no relevance to the determination of diversity, against the plaintiff's desire to remain in federal court.

Plaintiffs have no absolute right to prosecute their lawsuits in a federal court. Doughty cannot keep her case in federal court if she and Zoecon are not citizens of different states. Diversity jurisdiction was originally created to provide a federal forum for out-of-state litigants where they would be free from prejudice in favor of local litigants. *Jerguson v. Blue Dot Investments, Inc.*, 659 F.2d 31 (5th Cir. 1981), *cert. denied*, 456 U.S. 946 (1982). As a corporation based in Texas, Zoecon needs no such protection and neither does Doughty. She apparently prefers to maintain her case in federal court, but she has no absolute right and no jurisdictional basis on which to do so.

II.
PETITIONER'S FAILURE TO DISPUTE PROOF

The court of appeals reviewed the trial court's determination of Zoecon's principal place of business under the clearly erroneous standard. *Grinter v. Petroleum Operation Support Service*, 846 F.2d 1006, 1007 (5th Cir. 1979), *cert. denied* 488 U.S. 969 (1989). The court apparently was *not* "left with the definite and firm conviction that a mistake had been committed." *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948).

Seven months passed between the time Doughty received Zoecon's discovery answers and the time the trial court granted Zoecon's Motion to Dismiss. One reason the motion was granted was that Doughty had not disputed it. (Appendix to Petition for Writ of Certiorari, P. 36.) The court also had before it Zoecon's discovery responses, which showed that Texas is the *only* state in which Zoecon owns or leases real property, pays property taxes, owns personal property, maintains a home office,

manufactures the products it sells, researches and develops products for sale, pays sales taxes, and all corporate officers reside (Court of Appeals Opinion – Appendix to Petition for Writ of Certiorari, P. 52). No information indicated that Zoecon's principal place of business could be in any other state.

III.
FACTUAL DETERMINATION WITHIN TRIAL COURT'S BROAD DISCRETION

Doughty argues that the trial judge abused his discretion in disallowing discovery of Zoecon's balance sheets, general ledgers, financial statements and state and federal income tax returns. A holding that this type of private financial information must be produced, even after ample other information has proven the corporation's principal place of business, would be unduly burdensome and harassing to corporate defendants, and would substantially increase discovery disputes in diversity cases.

The type of information Doughty sought would not necessarily have shown what Zoecon's assets were, how much eash asset was producing, and its location. This type of information is wholly inappropriate to determining the principal place of business of a corporate defendant. It is the type of discovery engaged in by a party with a judgment who is seeking to locate specific assets to satisfy the judgment, and the trial court did not abuse its discretion by disallowing it in response to Zoecon's proof that diversity was lacking.

This case presented no dilemma to the lower courts about which test to use for determining Zoecon's principal place of business, and what the result would be under any test. The Fifth Circuit follows the "total

activities" test, (*See Danos v. Waterford Oil Company*, 351 F.2d 940, 942 (5th Cir. 1965)). The "total activities" test combines the "place of activities" test of the Third Circuit (*See Kelly v. United States Steel Corp.*, 284 F.2d 850 (3d Cir. 1960)), and the "nerve center" test recognized in the Second Circuit (*See Scot Typewriter Co. v. Underwood Corp.*, 170 F.Supp. 862 (S.D.N.Y. 1959) and *R.G. Barry Corp. v. Mushroom Makers, Inc.*, 612 F.2d 651, 655 (2d Cir. 1979)). However, the facts are so overwhelming and undisputed that any reasonable test which any court might apply would still find Dallas, Texas to be Zoecon's principal place of business.

Doughty seems to be urging this Court to create a new test for determining a corporation's principal place of business. Doughty advances an "asset distribution" test. She asserts that the trial court could not have determined Zoecon's principal place of business without full information regarding all of Zoecon's assets – their location, productivity, and value. Not only is this a cumbersome and unworkable test, but it is overly intrusive into the private financial affairs of a corporation at a point in a lawsuit when such intrusion is not justified.

This court has traditionally left questions of fact to the lower courts. There is no need for this Court to devise a new test to help lower courts determine a corporation's principal place of business. The current tests are fair, workable, and entirely adequate. Even if they are not, the facts of this case are so stacked in Zoecon's favor that there are no close questions when the current tests are applied. This case does not show a need for any new test to determine a corporation's principal place of business.

CONCLUSION AND PRAYER

This case presents no question beyond the specific fact of Doughty's refusal to acknowledge Zoecon's principal place of business, which was undisputed at the time it was ripe for determination by the trial court.

Zoecon Corporation prays that the Court deny Marvis Doughty's Petition for Writ of Certiorari, because the case presents no issue appropriate for the Court's review, and because the lower courts' holdings were not in error.

Respectfully submitted,

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